

REMARKS

With entry of this amendment, claim 29 has been cancelled, and claims 62-67 have been newly added. As a result, claims 1-28, 30-46, and 57-67 remain pending in this application. Based on the foregoing amendments and following remarks, entry of this amendment and reconsideration and allowance of this application is respectfully requested.

As an initial matter, Applicant believes that the Examiner has improperly examined this application de novo without consideration of the examination performed by the previous examiner, and apparently, without consideration of the examination previously performed by this Examiner.

When an examiner is assigned to act on an application which has received one or more actions by some other examiner, full faith and credit should be given to the search and action of the previous examiner unless there is a clear error in the previous action or knowledge of other prior art. In general the second examiner should not taken an entirely different approach to the application or attempt to reorient the point of view of the previous examiner, or make a new search in the mere hope of finding something. (See MPEP §704.01)(emphasis added).

Although the Examiner stated that he had discovered new prior art deemed to read on the previously allowable claims, this new prior art is no more relevant than the prior art previously cited in this application and found not to anticipate or obviate the claims.

For example, the previous examiner essentially found that claim 1 was allowable over U.S. Patent No. 6,017,338 ("Bruckner") (by virtue of finding that original dependent claim 8 reciting that the entirety of the shaft is porous), and this Examiner apparently agreed by choosing to previously reject claim 1 over other prior art. U.S. Patent No. 5,913,856 ("Chia"), which the Examiner has now cited as anticipating claim 1, is no more

relevant than Bruckner, since it does not disclose that the substantial entirety of the shaft is porous. Both Bruckner and Chia disclose that only the distal end of the shaft is porous.

This Examiner previously found that independent claims 1, 11, 19, 26, 35, and 41 were patentable over U.S. Patent No. 6,669,692 ("Nelson") by virtue of finding that dependent claims 6 and 29 (now incorporated into claims 1 and 26) recited patentable subject matter, and finding that claims 11, 19, 35, and 41 were allowable. The Examiner has now rejected all of these claims as being obvious over Nelson, alone, or in combination with Chia. With respect to rejecting the claims over Nelson, alone, Applicant is uncertain as to what changed between the time that the Examiner indicated that these claims were patentable over Nelson, and now. With respect to rejecting the claims over Nelson in view of Chia, Chia teaches no more about the specifics of porosity than what was already disclosed in the previously cited prior art. For example, Bruckner teaches the claimed pore size and pore interconnectivity.

Based on the foregoing, the Examiner has not cited a new prior art reference any more relevant than the prior art references previously cited in this application. To the extent that the Examiner disagrees, Applicant respectfully requests that he specify how Chia is more relevant Bruckner, and how Nelson is now more relevant than what it was before or how Chia is more relevant than Bruckner with respect to teaching the specifics of pores. Otherwise, Applicant implores the Examiner to allow the claims if he cannot find a more relevant reference. If it is the Examiner's position that he has now changed his mind with regard to manner in which the prior art is applied to the claims, Applicant insists that the Examiner stop doing this, so that this application can be expeditiously prosecuted to its conclusion without requiring Applicant to "hit a moving target."

Claim Rejections-35 U.S.C. §102

Claims 1-3, 6, 8-12, 15, 16, 18, 26, 27, 31-35, 37-40, 57, 59, and 60 stand rejected under 35 U.S.C. §102(b), as being anticipated by Chia. Applicant respectfully traverses this rejection, since Chia does not disclose each and every element required by these claims.

Citing col. 5, lines 25-45, the Examiner concludes that Chia discloses that the porous structure extends the entirety of the shaft. However, Chia only discloses that the tip section 6' is composed of porous plastic material (see col. 5, lines 30-32). Thus, Applicant submits that claims 1, 11, 26, and 35, as well as the claims depending therefrom (claims 2, 3, 6, 8-10, 12, 15, 16, 18, 27, 31-34, 37-40, 57, 59, and 60), are not anticipated by Chia.

In addition, claims 3, 12, 31, and 37 require the probe shaft or ablation probe to be rigid. By concluding that the Chia catheter is rigid based on the fact that it can be introduced into the vasculature of a patient, the Examiner has apparently interpreted the term "rigid" in a manner that covers any material that is in solid form, whether rigid or flexible. While Applicant appreciates that the Examiner is entitled to construe the claims as broadly as their terms reasonably allow, construing the term "rigid" to cover objects that are clearly flexible is unreasonable and is contradictory to the ordinary and accustomed meaning of "rigid.". Merriam Websters Collegiate Dictionary, 10th edition, defines "rigid" as "deficient in or devoid of flexibility" or "appearing stiff and unyielding." The Chia catheter is clearly flexible and is not stiff or unyielding—otherwise it could not be introduced through the vasculature of the patient without creating serious tissue trauma. The broadest reasonable interpretation of the claims must be consistent with the interpretation that those

skilled in the art would reach. It is difficult to imagine how one skill in the art could consider a flexible intravascular catheter to be a rigid probe.

As such, Applicant respectfully requests withdrawal of the §102 rejections of claims 1-3, 6, 8-12, 15, 16, 18, 26, 27, 31-35, 37-40, 57, 59, and 60.

Claim Rejections-35 U.S.C. §103

Nelson and Chia

Claims 1-6, 8-13, 15-18, 26-28, 31-35, 37-40, 57, 59, and 60 stand rejected under 35 U.S.C. §103, as being obvious over Nelson in view of Chia. Applicant respectfully traverses this rejection, since no proper combination of Nelson and Chia discloses, teaches, or suggests the combination of elements required by these claims.

In particular, there is no disclosure in Nelson that the porous structure 62 extends along substantially the entire length of the shaft. Notably, Fig. 2 of Nelson is a view of the distal end of the ablation catheter (see col. 3, lines 41-43)—not the entire length of the ablation catheter. In fact, the porous structure 62 terminates proximally at a non-porous central shaft 53, which presumably makes up most of the length of the ablation catheter. Thus, to the extent that Chia suggests any modification to the Nelson catheter, the resulting catheter would only have a porous structure at the distal end.

Thus, Applicant submits that claims 1, 11, 26, and 35, as well as the claims depending therefrom (claims 2-6, 8-10, 12, 13, 15-18, 27, 28, 31-34, 37-40, 57, 59, and 60), are not obvious over the combination of Nelson and Chia

In addition, claims 3, 12, 31, and 37 require the probe shaft or ablation probe to be rigid. The Examiner states that "rigid" is a very broad term. As stated above, it is not so

broad as to cover any solid, and when given its proper meaning, does not include flexible catheters. To conclude otherwise would completely eviscerate this term from the claims, which the Examiner cannot do. The Examiner further states that the plastic shaft of Nelson is rigid enough to provide support for the electrode, yet flexible to afford maneuverability of the distal section. This may be true, but this fact does not render the plastic shaft rigid, and does not reconcile how a plastic shaft can be both rigid and flexible at the same time. Gelatin would support an electrode as well, but no one would characterize gelatin as being rigid. Obviously, all materials have a certain durometer, but not all materials are rigid. The Examiner's position is tantamount to saying that because rubber has a finite resistance than it is electrically conductive. However, no reasonable person would characterize rubber as being electrically conductive.

As such, Applicant respectfully requests withdrawal of the §103 rejections of claims 1-6, 8-13, 15-18, 26-28, 31-35, 37-40, 57, 59, and 60.

Chia, Nelson, and Fung

Claims 7, 14, 19-25, 23-25, 30, 36, 41-46, 58, and 61 stand rejected under 35 U.S.C. §103, as being obvious over various combinations of Chia, Nelson, and U.S. Patent No. 6,602,242 to Fung et al. ("Fung"). Applicant respectfully traverses this rejection, since no proper combination of Chia, Nelson, and Fung discloses, teaches, or suggests the combination of elements required by these claims. In particular, as previously discussed, neither Chia nor Nelson discloses that the porous structure extends along a substantial entirety of the probe shaft, and Fung does not supplement this failed teaching.

Thus, Applicant submits that claims 7, 14, 19-25, 23-25, 30, 36, 41-46, 58, and 61 are not obvious over the combination of Chia, Nelson, and Fung, and as such, respectfully requests withdrawal of the §103 rejections of these claims.

New Claims

Applicant submits that newly added claims 62-67 find support in the specification, as originally filed, and are patentable over the prior art for at least the same reasons as independent claims 1, 11, 19, 26, 35, and 41 are patentable.

Conclusion

Based on the foregoing, it is believed that all claims are now allowable and a Notice of Allowance is respectfully requested. If the Examiner has any questions or comments regarding this amendment, the Examiner is respectfully requested to contact the undersigned at (949) 724-1849.

Respectfully submitted,

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